IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

OP.No. 6014 of 2003(N)

PETITIONER:

M.P.DAMODARAN, RESEARCH STUDENT,
DEPARTMENT OF ANTHROPOLOGY, KANNUR UNIVERSITY,
THALASSERRY CAMPUS, POST PALAYAD, KANNUR DISTRICT

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:
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1. VICE CHANCELLOR OF KANNUR UNIVERSITY,
KANNUR, KANNUR DISTRICT.

2. KANNUR UNIVERSITY, REPRESENTED BY THE
REGISTRAR, KANNUR UNIVERSITY, KANNUR DISTRICT

3. DR.ANAND BHANU, HEAD OF THE
DEPARTMENT, DEPARTMENT OF ANTHROPOLOGY,
KANNUR UNIVERSITY, KANNUR DISTRICT.

4. MAHENDRAKUMAR M.S. GUEST LECTURER,
DEPARTMENT OF ANTHROPOLOGY, KANNUR UNIVERSITY,
KANNUR DISTRICT

5. BINDU RAMACHANDRAN, GUEST LECTURER,
DEPARTMENT OF ANTHROPOLOGY, KANNUR UNIVERSITY,
KANNUR DISTRICT

BY ADV. SRI.MOHAMMED MUSTAQUE, SC, KANNUR UTY.
SRI.V.V.ASOKAN
SRI.PAUL ABRAHAM VAKKANAL
SRI.GRASHIOUS KURIAKOSE
SRI. K.JAJU BABU, SC, KANNUR UNIVERSITY
M.SASEENDRAN,SC,KANNUR UNIVERSITY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.6014/2003

ORDER IN C.M.P.NO.10565 OF 2003 IN OP NO.6014 OF 2003

DISMISSED

21/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE REPRESENTATION DATED 2.1.2003 FILED BY THE PETITIONER BEFORE THE VICE CHANCELLOR OF THE UNIVERSITY.

EXT.P2: TRUE COPY OF THE REGULATION RELATING TO REGISTRATION OF THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY.

EXT.P3: TRUE COPY OF THE APPLICATION WITH SL.NO.0072 DATED 28.9.2002 FOR SELECTION IN THE OPEN CATEGORY.

EXT.P4: TRUE COPY OF THE APPLICATION WITH SL.NO.0120 DATED 28.9.2002 FILED BY THE PETITIONER FOR SELECTION IN SC RESERVATION CATEGORY.

//TRUE COPY//

Antony Dominic, J.
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O.P.No.6014 of 2003
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Dated this the 21st day of February, 2007.

JUDGMENT

Petitioner, an applicant to the post of Lecturer in the Department of Anthropology in the second respondent University, has filed this Original Petition seeking to declare that the selection and appointment of respondents 4 and 5 as Lecturers in the Department of Anthropology is illegal and erroneous. Further, he is also seeking a declaration that the Selection Committee constituted for the purpose of selection to the post of Lecturer in the Department of Anthropology, which conducted the interview on 15.1.2003, was not properly constituted as per law. Consequential reliefs are also sought for. The facts as narrated in the Writ Petition would disclose that after the vacancy to the post of Lecturer in the Department of Anthropology was notified by the University, the petitioner had filed Ext.P1 representation before the Vice Chancellor of the University against the inclusion of the third respondent, Dr.Anand Bhanu, Head of the

Department of Anthropology in the Selection Committee. He had filed an Original Petition before this Court as O.P.No.883 of 2003 objecting to the continuance of the third respondent in the Selection Committee. The Original Petition was admitted on 9.1.2003, but however, without any interim order, restraining the University from proceeding with the selection process. The University continued with the selection process and candidates, who had responded to the advertisement, were called for an interview, which was held on 15.1.2003. The Selection Committee is to consist of the Vice Chancellor as its Chairman, a Syndicate member, two outside experts chosen by the Syndicate and the Head of the Department or the Professor-in-charge. According to the University, since the petitioner had objected to the inclusion of the third respondent being Head of the Department, he was excluded and it was instead of him that the Professor-in-charge was inducted into the Selection Committee. According to the petitioner, in the place of two outside experts to be chosen by the Syndicate, Professor Hussain Khan and Dr.H.K. Bhat, who were Guest Lecturers in the very same Department, were included in the Selection Committee and respondents 4 and 5 came out successful in the selection. According to the petitioner, with their selection, his apprehensions came true. It is in that background that this Writ Petition was filed seeking the reliefs

mentioned earlier.

2. In the Original Petition, allegations have been raised against the third respondent, Head of the Department, who has been impleaded in the personal capacity. It is alleged that the so-called outside experts acted as agents of the third respondent and as the selection was influenced by the third respondent, the selection of respondents 4 and 5 is vitiated.

3. The third respondent has filed a counter affidavit denying the allegations. Similarly, the University has also filed a counter statement. In the counter statement filed by the University, they say that Dr.H.K.Bhat, Professor and Head of Department in the Department of Anthropology, University of Mysore and Professor Hussain Khan, Head of Department of Anthropology, Karnataka University, Dharwad are the two outside experts included in the Selection Committee which conducted the interview. According to the University, these two persons are only Visiting Professors in the Department of Anthropology and not Guest Lecturers as contended by the petitioner. It is also stated that these outside experts were selected and invited by the Vice Chancellor from a panel approved by the Syndicate and that the third respondent has no role in selecting these outside experts nor in the matter of the interview conducted for

selection of Lecturers. The petitioner has also filed a reply affidavit refuting the averments made in the counter statement of the University and the counter affidavit filed by the third respondent.

4. Counsel for the petitioner raised mainly two arguments. The first argument raised by him was referring to Section 4(ii)(b) of Chapter III of the Kannur University First Statutes, 1998, which specifies constitution of the Selection Committee for the post of Reader/Lecturer, which is as follows:

> "For the posts of Reader, Lecturer etc:- One Syndicate member to be nominated by the Vice-Chancellor, two outside experts chosen by the Syndicate and the Head of the concerned University Department or the teacher holding charge of the Head of the Department."

A reading of the above would indicate that among others, two outside experts chosen by the Syndicate are to be included. It is contended that Dr.H.K.Bhat and Professor Hussain Khan being Guest Lecturers, they are associated with the academic matters in the University and hence, are not outside experts in terms of the provisions contained in the University First Statutes.

5. Reference has been made to a judgment of this Court reported in **Ajitha** v.**Mahatma Gandhi University** - 2001(2) K.L.T. 878 and in particular paragraph 5 therein. That was a case where

Dean of the Cochin University associated with the School of Indian Legal Thoughts of the M.G. University who was giving lectures on specialised subject of Law as a Guest Lecturer, was was included in the selection for the post of Lecturer in the M.G. University. On the ground that he was not an outside expert as contemplated in Section 4(ii)(b) of Chapter III of the Kerala University First Statutes, 1977, which is similar in all respects, that an Original Petition was filed. It was considering such a case that this Court declined to accept the contention of the University that Dr.V.D.Sebastain was an outside expert, holding that so long as he draws whatever little remuneration from the University funds as a Guest Lecturer and so long as he delivers lectures in the academic matters of the University "on appointment as a Guest Lecturer", he cannot be considered to be an outside expert. On this ground, the selection was held to be vitiated because of the inclusion of the Guest Lecturer as an outside expert.

6. The above argument of the counsel for the petitioner is met by the counsel for the University on the ground that Dr.H.K. Bhat, Professor and Head of the Department in the Department Anthropology, University of Mysore and Professor Hussain Khan,Head of the Department, Anthropology, Karnataka University, Dharwad were not Guest Lecturers as in the case dealt with by this Court in the

aforesaid decision, but are only Visiting Professors. According to him, the Visiting Professor stands on a much higher pedestal than the Guest Lecturer. It is stated that the Visiting Professors by virtue of their reputation in academic fields are invited to deliver lectures in the Universities on payment of honorarium unlike the Guest Lecturers, who are appointed for specified duration and are paid salary. It is stated that the Visiting Professors deliver lectures only on occasions and they always remain attached to their parent Universities. It is on the above basis that it is contended that the facts considered by this Court in the aforesaid judgment are totally different from the facts of this case and according to the counsel that judgment cannot be applied.

7. It is true that by virtue of the provisions contained in Clause (4)(ii)(b) of the Kannur University First Statutes, 1998 while selecting the post of Lecturer, the Selection Committee has to include two outside experts chosen by the Syndicate. As already noted, the petitioner has raised objections in the pleadings on the ground that the persons, who were included as outside experts were Guest Lecturers in the Department of Anthropology of which the third respondent is the Head of the Department. It is on the above basis that he has stated that the third respondent has chosen two Professors, who work in the

same Department as Guest Lecturers and pleaded that in order to safeguard the interest of the third respondent the so-called outside experts were interested in respondents 4 and 5 and hence, the selection is vitiated. As already stated, first of all the two persons who were included as outside experts are not Guest Lecturers, but are only Visiting Lecturers. I am not willing to equate a Guest Lecturer with a Visiting Professor. Visiting Professors are academicians of repute and their lectures in specialised subjects are made use of by the Universities by inviting them to deliver occasional lectures for the benefit of students and teaching faculty as well. On the other hand, as already stated, the Guest Lecturers are people, who are appointed for specified duration for salary. It is also pointed out that unlike in the case of Guest Lecturers to whom wages are paid, it is only honorarium, which is paid to the Visiting Professors. Taking note of the qualitative difference, I am not inclined to accept the contention of the petitioner that the Visiting Professors are not outside experts.

8. The other contention raised by the petitioner is more in the nature of bias. It is stated that the petitioner had even prior to the filing of O.P.No.883 of 2003 submitted Ext.P1 representation complaining against the inclusion of the third respondent in the Selection Committee. Though the third respondent by virtue of his

capacity as Head of the Department was entitled to be included in the Selection Committee, apparently for the reason that the petitioner had expressed his reservation against his inclusion in the Selection Committee, which conducted the interview on 5.1.2003, the third respondent was excluded and in his place, it was the Professor-in-charge, who was included. The pleading of the writ petitioner would show that the outside experts acted as agents of the third respondent. The third respondent filed an affidavit denying these allegations. The allegations made as reflected in paragraph 11 and Ground F of the Original Petition are seen denied by the third respondent in the counter affidavit filed by him and the University in their counter statement and nothing is placed on record to discredit the averments therein. In any case, in the absence of any material in support of the allegations and particularly for the reason that the petitioner has proceeded on the erroneous assumption that the outside experts are Guest Lecturers, I do not find any substance in the argument. Further, petitioner has also not impleaded these outside experts, and in their absence in the party array, I will not be justified in taking cognisance of these allegations of the petitioner.

In the result, I do not find any irregularity in the selection in

which respondents 4 and 5 were selected and the Original Petition is only to be dismissed and I do so. No costs.

Antony Dominic
Judge.

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